

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

9

DECISION

TOPIC

**PROPOSED CONTESTED CASE DECISION - EDWARD AND JORDAN
BRANSTAD, MONROE (MONTY) BRANSTAD**

Edward and Jordan Branstad, and Monroe (Monty) Branstad

On December 21, 2004, the department issued Administrative Order No. 2004-AQ-62, 2004-SW-42 to Monroe (Monty) Branstad. The order cited Monty Branstad, as operator of a site known as the Branstad Farm, for permitting illegal open burning and open dumping on the property. The order required Monty Branstad to remove and properly dispose of all solid waste and to pay a penalty of \$8,000. That action was appealed. On February 23, 2006, DNR issued Amendment to Administrative Order No. 2004-AQ-62-A1, 2004-SW-42-A1. Monty Branstad also appealed the amended order.

Also on February 23, 2006, DNR issued Administrative Order No. 2006-AQ-08, 2006-SW-08 to Edward Branstad, as owner of the property, and Jordan Branstad, as a person who periodically lives on the property and who was involved in the open burning violations. This administrative order cited the same factual basis as the prior administrative order issued to Monty Branstad. The administrative order required Edward Branstad and Monty Branstad to remove and properly dispose of all solid waste located at the site and to pay a penalty of \$8000. Edward Branstad and Jordan Branstad filed an appeal.

A consolidated hearing regarding the appeals of both orders was held on August 21, 2006. All of the appellants were represented by the same attorney. Following the hearing, the record was held open until October 31, 2006, for the filing of briefs and reply briefs. DNR filed a brief on October 2, 2006; Appellants filed a reply brief on October 12, 2006; and both parties filed response briefs on October 31, 2006.

A Proposed Decision was issued November 13, 2006. The Proposed Decision dismissed the amended order issued to Monty Branstad, stating that DNR did not prove that Monty Branstad was the operator of the site. Based on testimony given at the hearing by Monty and Edward Branstad, the Administrative Law Judge (ALJ) ruled that Edward Branstad was both the owner and operator of the site, and that Monty Branstad worked for his father at the site. The Proposed Decision affirmed the administrative order issued to Edward and Jordan Branstad, but reduced the penalty to \$4,500. The ALJ reduced the gravity portion of the penalty from \$3500. to \$2000., stating that the amount of prohibited materials that were open dumped and open burned did not justify the maximum gravity assessment. The ALJ reduced the culpability portion of the penalty, stating that although Edward and Jordan Branstad knew or should have known about the

DNR's prior enforcement actions and communications regarding the site, this was the first administrative order issued to Edward and Jordan Branstad.

DNR has been informed that the appellants will appeal the Proposed Decision. If that appeal occurs in a timely manner, then DNR will present a proposed briefing schedule for your approval at the January EPC meeting. If a timely appeal is not received, DNR will recommend acceptance (i.e., no review) of the Proposed Decision because the ALJ reasonably weighed the testimonial evidence presented at the hearing and based the Proposed Decision on those fact findings.

Edmund J. Tormey, Chief
Legal Services Bureau

December 12, 2006